

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CRI-2021-009-269
[2022] NZHC 1083**

THE QUEEN

v

RENA JOYCE

Hearing: 17 May 2022

Appearances: P A Currie and P N M Brown for Crown
R A Peters for Defendant

Judgment: 17 May 2022

SENTENCING REMARKS OF EATON J

Introduction

[1] Rena Joyce, you appear for sentencing today having been found guilty by the jury of the murder of your de facto partner Martin Berry.¹ You can remain seated while I conclude my sentencing remarks, but I will ask you to stand when I formally impose sentence.

[2] I am sure you understand that the statute that governs the sentencing of a person convicted of murder requires that I sentence you to life imprisonment unless it would be manifestly unjust to do so.² It is not suggested that exception applies in your

¹ Crimes Act 1961, ss 167(b) and 172. Maximum penalty of life imprisonment.

² Sentencing Act 2002, s 102(1).

case. The focus of this sentencing is the minimum period of imprisonment (what is called the MPI) that you must serve before you can be considered for parole.

[3] I will summarise the facts of the offending. The facts will be well known to you and others who are participating in this hearing today. But because sentencing is a public process it is important that the broader public are aware of the basis upon which I am sentencing you today.

The facts

[4] You met Martin Berry through his brother in about 2016 and you forged a relationship, and about six months later you moved in together at his property here in Christchurch.

[5] You were both alcoholics. Each of you were employed intermittently throughout the course of your relationship. Your relationship was one marred by regular drunken acts of violence perpetuated predominantly by you on Mr Berry but also, I accept, by him on you. This led to you being convicted on three distinct occasions for varying levels of assault against Mr Berry in 2018 and 2019. He was charged and convicted for a serious assault on you in 2018.

[6] On 29 December 2020 you and Mr Berry had lunch at a local restaurant with his brother, David, and his partner, Pearl. At that lunch there was no inkling of what was to later occur. You say there was conversation about David having left a dog in a vehicle and that that made you very upset and angry. You returned to Mr Berry's property in the late afternoon. It was several hours later that the incident that gave rise to your conviction for murder arose. I accept there was an argument of sorts between the two of you and I accept it is likely that that involved Mr Berry's cannabis use.

[7] Whatever that argument was about in terms of detail, you became enraged and, in your words, you lost it, you snapped, you turned into a monster and you launched what can only be described as a sustained and lethal knife attack on Mr Berry. You stabbed him multiple times in the back of his neck and in his upper back. You also cut his throat. The attack only stopped when the blade of the knife became lodged in Mr Berry's cervical spine and the handle broke away from the blade. The wounds you

inflicted would have caused Mr Berry to bleed profusely and there was much blood at the scene, as evidenced by luminol testing.

[8] You have been unable to explain how you came to be in possession of a knife and the evidence does not permit any definitive finding as to when and how that happened. But what is clear, however, is that you were armed with a knife with a 10 cm blade. Mr Berry was unarmed and you repeatedly stabbed him, targeting his neck and throat.

[9] You did not render first aid. You did not seek medical attention for Mr Berry. Instead, you took steps to conceal the killing. On your account it was some hours later that you wrapped his body in a blanket before dragging Mr Berry into the back yard near to a compost pile where you covered him with soil and leaves and you left him.

[10] Over the following two weeks you were captured on CCTV footage visiting your local supermarket purchasing alcohol and grocery items, but also cleaning chemicals (including bleach and disinfectant), a large number of rubbish bags and other cleaning products. And you used those products to undertake some cleaning of the property, including the bloodstained areas.

[11] You also disposed of Mr Berry's possessions, including his clothing and furniture. You packed up your own personal property and you arranged for an associate to store those items at a friend's garage.

[12] When you were questioned as to Mr Berry's whereabouts you fabricated a story that he had left Christchurch and was seeing another woman.

[13] Ms Joyce, it is difficult to reconcile your conduct after you killed Mr Berry with your assertion that you snapped and only briefly became a monster. Because for the next two weeks Mr Berry's body lay concealed in the garden, inevitably decomposing, and in that period you sought to eliminate any tangible memory of Mr Berry.

[14] I do accept that by 13 January 2021, the burden that you were carrying became too much for you and you went first to the Christchurch District Court and then the Christchurch Central Police Station where you confessed to having “accidentally manslaughtered” Mr Berry. You told the police where to find his body. You described at interview a heated argument on the night of Mr Berry’s death. You claimed that you had snapped, stabbing him multiple times with a knife and you said that once you started you could not stop. As I have said, you described yourself as having turned into a monster.

[15] A short time later, Mr Berry’s body was located in the back of his property as you described. His body was badly decomposed. The forensic pathologist identified nine separate stab wounds to the left side of the back of his neck and upper back. Due to decomposition the post-mortem was unable to identify if there had been any other injuries to Mr Berry’s body. At interview, you had both described and demonstrated how you had cut his throat. Decomposition had destroyed any evidence of that wound. The pathologist opined that Mr Berry died from multiple stab wounds.

[16] What is regrettably clear is that at police interview you were unable to express any genuine remorse for killing Mr Berry. Rather, you spoke repeatedly, and at times in a rambling fashion, criticising Mr Berry, essentially blaming him for your predicament and casting aspersions on his family.

[17] Although I accept that you were suffering at the time of the interview, the negativity that you exhibited towards Mr Berry is perhaps the best evidence as to what led you to attack and kill Mr Berry on the night of 29 December. Your interview revealed the extent of your resentment towards Mr Berry.

[18] At the outset of the trial and through your counsel, you accepted that you had unlawfully caused Mr Berry’s death. At trial you elected to give evidence. You simply adopted your police interview as your evidence. Under cross-examination you denied having stabbed or killed Mr Berry and it seems to me you that you were under a misconception that an admission that you killed Mr Berry was an admission that you intended to kill him which was the real core of your defence.

[19] It is a feature of this case that your violence against Mr Berry continued notwithstanding a number of interventions and, in particular, the frequent involvement of police. This gave rise to issuing of police safety orders against you, to your arrest, prosecution and conviction on charges of assault against Mr Berry. There was also the issuing of a protection order in favour of Mr Berry. At the time that you killed Mr Berry you were subject to a sentence of intensive supervision. Each of those interventions was intended to offer some protection to Mr Berry and to reduce the risk of your further offending against him.

[20] I accept that what is known as intimate partner violence, was not a one-way street and that Mr Berry had acted violently towards you. I refer to his prior conviction, an assault that was in part witnessed by your neighbour. But, Ms Joyce, throughout the relationship I determine you were overwhelmingly the aggressor. As much is clear from the various police reports following attendances at the address.

[21] As was said repeatedly throughout the trial, your relationship with Mr Berry was tumultuous and frequently toxic. You both knew that, and I do not doubt that on one level you loved each other and shared a bond, but it was a bond which both of you found very difficult to sever. Neither of you had the necessary supports, structure or motivation to make a break. It is no coincidence that Mr Berry's family, even today, can acknowledge that Martin Berry loved you.

Victim impact statements

[22] I have heard the victim impact statements this morning from Martin's brother, David, from his sister Joanna, and his niece, Hannah. I have also read the statements of Caryll and Raymond Powell, and their daughter Kathleen.

[23] I gain a strong sense of the love his family and friends had for Martin and the deep sense of hurt that they now feel. A recurrent theme is the deep sadness that you have denied Martin's family any tangible memory of him, having disposed of all his worldly possessions. Also, just how completely senseless his death was.

[24] I thank those who have provided statements for their valuable insight into Martin Berry as a brother, an uncle, and a friend.

Personal Circumstances

[25] Ms Joyce, I have had the benefit of reports that set out the circumstances in which you grew up and other factors that are relevant to you.

[26] The pre-sentence report briefly outlined your background. You described your childhood as part of a large military oriented family living in poverty. You said alcohol abuse and domestic violence took place in the family home and you recall watching your father beat your mother on a regular basis. Your parents separated when you were very young. It is recorded that, at the time of the pre-sentence report, you had not had any contact with your family since your mother had died in 2004.

[27] It was in 2004 you moved to New Zealand with your husband at the time. You were in a relationship with him for over ten years. You described that relationship as “toxic” and “violent”.

[28] After separating from your husband, you met Mr Berry and you described the start of this relationship as “wonderful” but explained that things started to decline when you were both under financial pressure. At this time, you describe your alcohol use as a problem, saying that both you and Mr Berry would consume three litres of wine each evening. You maintained there was violence on both sides of the relationship in equal parts and you reported your frustration with Mr Berry’s alcohol and drug use.

[29] After discussing the concept of a healthy relationship with you, the report writer noted that it is evident you may not understand what a healthy relationship or communication looks like. The pre-sentence report writer also identified your alcohol use as contributing to your offending behaviour and you admitted relapsing heavily after Mr Berry’s death.

[30] Your escalation in violence and your lack of emotional regulation is evidenced by the three previous assault charges relating to Mr Berry, as noted by the report writer.

[31] In your interview for the pre-sentence report, you maintained that what happened with Mr Berry was manslaughter as you had no intent to kill him. The writer

described you as being “very emotional” at times during the interview, noting comments that you love and miss Mr Berry. You recalled the good times in your relationship but maintained there were problems in the relationship, problems caused by Mr Berry.

[32] The report does record that you expressed regret, but particularly around the situation that you are now in. You expressed little emotion when questioned around the views of Mr Berry’s family or the fact that you had taken a life, simply stating that it was “sad, so very, very sad”.

[33] Offending related factors were identified as your struggle with alcohol, relationships and your use of violence.

[34] A cultural report was prepared by Dr Jarrod Gilbert to further assess your background and that report provides further details about your early childhood. It records both of your parents being alcoholics, and your father being both mentally and physically abusive, often beating your brothers and mother while drunk. Although you cannot remember him beating you, you say your mother would beat you when she was drinking, on one occasion to the point where you found it difficult to breathe.

[35] After your parent’s separation your mother abandoned you and your siblings for a period of time, and you learnt to fend for yourselves. You recall leaving school at age 16 to gain employment.

[36] From your early 20s and onwards all of your relationships have involved violence.

[37] The cultural report identified the factors likely contributing to your offending as your instability of care and housing during your childhood, normalisation and experience of violence, and the normalisation of problematic violence use. It notes that you want to use your time in prison to work on your alcohol addiction and to become a prosocial member of society.

[38] Two health assessor reports were prepared by psychiatrists.³ Both opined that there was no evidence you were experiencing any major mood disorder or psychosis at the time of the offending. Both psychiatrists considered there was no evidence of mental impairment. However, both reports identified your issue with alcohol as being significant. More specifically, Dr Foulds considered you have severe alcohol use disorder, and Mr Panckhurst diagnosed your alcohol dependence.

The principles and purposes of sentencing

[39] In determining the appropriate sentence today, I must take into account the purposes and principles as outlined in the Sentencing Act 2002. There is a need to denounce your offending and to hold you accountable for the harm that you have done. The sentence I will impose is intended to promote a sense of responsibility in you for that harm. There must be deterrence, both against future offending by you and against others who might act similarly. And I have to consider the protection of the public.

[40] The sentence I impose on you must be consistent in kind and length with those that are imposed on others who have offended in a similar way. And I must consider the gravity of your offending and your own culpability. I must take into account any circumstances that might make an otherwise appropriate sentence disproportionately severe and the effects that the offending has had upon you.

The approach to sentence

[41] In any case where an offender has been found guilty of murder, a sentence of life imprisonment must be imposed unless it would be manifestly unjust for that to occur.⁴ There is no suggestion that it would be manifestly unjust for you to receive a sentence of life imprisonment.

[42] Where a Court sentences an offender to life imprisonment it must also impose an MPI no less than 10 years.⁵

³ These reports were prepared to assess Ms Joyce's fitness to stand trial and the availability of a defence of insanity pursuant to s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

⁴ Sentencing Act, s 102(1).

⁵ Section 103(1) and 103(2).

[43] In certain circumstances, however, the Court is required by s 104 of the Sentencing Act to impose an MPI of not less than 17 years.⁶ Counsel are agreed that s 104 is not engaged here. I too agree. I appreciate Mr Berry's family will be perhaps distressed that there is agreement this murder did not involve a level of brutality or callousness that would attract a 17-year MPI. That determination does not in any way diminish the impact this offending has had on Mr Berry's family and friends.

[44] So, life imprisonment is the sentence I will be imposing on you today. The focus for this Court is how much more than the 10-year MPI is required to achieve the sentencing purposes that I have outlined.⁷

Aggravating features of offending

[45] The first step in fixing the MPI is to determine your culpability, having regard to the aggravating and mitigating features of the offending. Ms Joyce, you have heard counsels' submissions. As you have heard this morning, by reference to multiple factors said to aggravate the offending and by reference to a number of cases, the Crown's position is that the MPI should be one of 16 years. Mr Peters, on your behalf, accepts that the domestic violence factor in particular aggravates your offending. He submits in his written submissions that the cases indicate a range in similar cases, before considering personal factors, of 12 to 17 years for cases of domestic violence murder. He has proposed a starting point of no more than 15 years.

[46] I find the following aggravating factors are present and support the imposition of a higher MPI:⁸

- (a) Victim vulnerability:⁹ Mr Berry's death was, in my view, the result of an escalating pattern of domestic violence perpetrated by you. You had the three prior convictions for assaulting Mr Berry.¹⁰ He had obtained a final protection order against you following the last conviction in

⁶ Section 104(1).

⁷ Section 103(2).

⁸ The aggravating and mitigating features set out in s 9 of the Sentencing Act are relevant to the starting point assessment to the extent they go to the purposes in s 103(2).

⁹ Section 9(1)(g).

¹⁰ More specifically assault with intent to injure (representative, family violence), assault on a person in a family relationship and common assault (family violence).

early 2020. The police had attended his address on multiple occasions following family harm incidents. Mr Berry had complained to his family, to his friends and to his probation officer that he was scared for his own safety, but he was embarrassed at his predicament. Although it is not clear because of decomposition, there were no clear defensive wounds on his body at post-mortem suggesting he was defenceless. I have no doubt that Mr Berry was vulnerable.

- (b) Level of cruelty.¹¹ I hope, Ms Joyce, that you can understand why the prosecution submit that your actions in failing to call for medical assistance, dragging Mr Berry's body out into the garden to the area of the compost, covering him in vegetation, leaving him there, engaging in a clean-up and then disposing of his property and lying as to his whereabouts demonstrates a high level of cruelty. I accept you did not have a coherent plan to conceal the murder. I accept that it is likely that you panicked. I am not persuaded that the clean-up was a really serious attempt to conceal the murder. I acknowledge that when you came to appreciate the gravity of what you had done you fell off the wagon and began drinking heavily. The CCTV footage and supermarket invoices confirm that you were drinking throughout the days that followed. And so I do accept that your relapse would have had some influence over the decisions you were making during the following two week period. Mr Peters, in his written submissions, questions whether the evidence establishes that you were responsible for the disposal of Mr Berry's personal property. I am satisfied you were. You admitted in evidence that you have kept personal items and clothing. You said you gave away all the other property. Unidentified items were thrown over the fence at the address or otherwise dumped in rubbish bins.

But generally, looking at the issue of cruelty, Ms Joyce, your actions in dragging Mr Berry's naked body into the garden, leaving him there, lying about his whereabouts and disposing of his property was

¹¹ Sentencing Act, s 9(1)(e).

disturbing and it caused so much harm to Mr Berry's family as you have heard this morning.

[47] In addition, the Crown has referred to the devastating consequences for Mr Berry's family and friends who have lost a beloved uncle, brother and friend. I accept what they have told me through their victim impact statements without question. That level of loss and hurt is sadly inherent in all offending of this nature. I do not find it to be a strong aggravating factor in your offending. Likewise, and as properly acknowledged by the Crown, while it can aggravate offending¹² the use of a weapon is largely inherent in cases of murder.

[48] I accept that this murder was not premeditated. But something sparked your rage. I have accepted it was most likely an argument. But your response was so extreme and has had such far-reaching consequences.

Mitigating features of the offending

[49] The Crown submits, and the defence agrees, that there are no mitigating features of the offending. I agree with that.

Comparison with other cases

[50] That is the next step in determining an MPI. To consider comparable sentences handed down in other cases with broadly similar features and I have carefully read and considered the authorities that have been provided by the Crown¹³ and by your counsel.¹⁴

[51] Many of those cases bear a factual similarity to this case in that they concern murders in a relationship context, but none are on all fours with it. To that extent, direct comparison is not available.

¹² Section 9(1)(a).

¹³ *R v McSweeney* [2007] NZCA 147; *R v L* HC Auckland CRI-2004-044-8643, 13 June 2006; *R v Tai* [2018] NZHC 1602; *R v Lamont* HC Greymouth CRI-2009-018-702, 16 December 2010; *R v Li* [2020] NZHC 3419; *R v Browne* [2017] NZHC 2389; *R v Ford* [2020] NZHC 2579; *Marteley v R* [2016] NZCA 480; *R v Roper* [2013] NZHC 1687; and *R v Ngatai* [2020] NZHC 2106.

¹⁴ *R v Browne*, above n 13; *R v Ford*, above n 13; and *Marteley v R*, above n 13.

[52] Of the cases referred to me I regard *Roper* and *Ngatai* as the most relevant comparators. The summaries of those cases are as follows:

- (a) In *R v Roper* the defendant murdered a former partner by strangling her.¹⁵ There had been previous violence in the relationship and a protection order had been made against the defendant. The defendant placed the victim in a bed to make it appear she had succumbed to natural causes and locked the doors to the house. He then took the victim's car, stole and sold her laptop, and withdrew money from her account. The offender attempted to conceal the murder for several days and unsuccessfully attempted to tamper with witnesses. The aggravating factors were the resumed contact in breach of the protection order, a history of abuse, sustained attempts to escape detection, theft and the impact on surviving victims. There was no discount for a guilty plea. The defendant there was sentenced to an MPI of 14 and a half years.

- (b) In *R v Ngatai*, the defendant was on release conditions at the time and murdered his partner by strangling her and stomping on her head after an argument at her home.¹⁶ He dragged her body through the house, covered her with blankets, leaving her there. He then stole her purse, car, and bank cards which he used to buy alcohol and to withdraw all her money from her account. The offender also concealed bloodied areas of carpet and in the following weeks texted her family from her phone to allay their concerns about her whereabouts. The victim was found 13 days after the murder. The offender pleaded guilty following a sentence indication of an MPI of 16 years, which took account of the violence, extent of harm, abuse of trust as the victim's partner, the fact the offending occurred whilst the offender was serving a sentence, and the offender's previous convictions. With the benefit of pre-sentence and s 27 reports, the final MPI was one of 15 years.

¹⁵ *R v Roper*, above n 13.

¹⁶ *R v Ngatai*, above n 13.

[53] Both of those cases involved a prior history of violence, deliberate concealment of the offending and an element of cruelty in misappropriating the victim's belongings. MPIs of 14 and a half years and 16 years, respectively, were fixed, prior to consideration of reductions for personal mitigating factors.

[54] I have also considered another case, *R v Marsters*.¹⁷ In that case the offender murdered the victim, with whom he was in a relationship, by stabbing her in the chest multiple times. Relevantly, there had been a precursor incident of intimate partner violence about two weeks earlier. In breach of a bail condition the offender approached the victim to persuade her to drop charges. After killing the victim, he set alight the vehicle in which he had left her, burning her remains beyond recognition. A notional MPI of 14 years was considered as appropriate to reflect the offending, with reference to the offender being on bail at the time of the murder, the use of a weapon, the victim's vulnerability, the great hardship inflicted on the victim's family and the callousness in burning the victim's body in an attempt to conceal the offending.

[55] I see your offending as generally similar to the offending in those three cases.

[56] The distinguishing features of your offending that, in my view, call for an MPI towards the level sought by the Crown are, firstly, that this was the culmination of an escalating pattern of violence against Mr Berry. As I have said, I have no doubt you were predominantly the aggressor against a vulnerable victim. Secondly, your conduct in the aftermath of the murder.

[57] An MPI of significantly more than 10 years is required to satisfy the purposes of accountability, denunciation, deterrence and community protection. Having considered your case carefully and comparator cases, I adopt a notional MPI of 14 and a half years' imprisonment.

Personal circumstances

[58] I now turn to any adjustments that would be appropriate to that notional MPI in light of your personal circumstances.

¹⁷ *R v Marsters* [2021] NZHC 1268.

Aggravating features of the offender

[59] You have previous convictions for assaulting Mr Berry and I do not overlook that this offending occurred while you were subject to a sentence of intensive supervision following your conviction for assaulting Mr Berry with intent to injure in September 2019.¹⁸ The Sentencing Act requires me to consider uplifting your sentence to reflect your previous offending and for offending while subject to a sentence. The Crown has not submitted that in this case an uplift is necessary. Given I have had regard to your history of offending against Mr Berry in considering his vulnerability, I do not think it is appropriate or necessary to apply an uplift.

Mitigating features of the offender

[60] Mr Peters has raised three factors said to mitigate your offending.

Cultural and psychiatric reports

[61] Dr Gilbert paints a picture of the social disadvantage that you have suffered through a life of alcohol and violence. He identifies a causal connection between the violence you witnessed and experienced in your childhood, your very early and persistent exposure to alcohol abuse and your subsequent struggles with alcoholism and your propensity for violent offending.

[62] While intoxication is not a mitigating factor,¹⁹ exposure to alcohol abuse as an environmental factor can impact life choices generally and indirectly reflect moral culpability. That you suffer severe alcohol abuse disorder and grew up in an environment of alcoholism and violence cannot, in my view, be ignored in fixing a fair and just sentence.

[63] I acknowledge you were not intoxicated at the time that you fatally stabbed Mr Berry, but I do accept that the scars of your longstanding alcoholism and your unhappy family history run deep and that a consequence of your addiction and past was the normalisation of violent behaviour by you in a domestic setting. I find there

¹⁸ Sentencing Act, s 9(1)(c).

¹⁹ Section 9(3).

is a causal link between your alcohol abuse disorder, the disadvantages you suffered as a young person and your offending. It is not a strong causal connection but, in my view, it warrants a deduction of five percent (rounded up to nine months) to reflect the matters raised in the reports.

Remorse

[64] The Crown submits that you do not exhibit remorse. It was remarkable and disturbing that at trial, when you must have thought long and hard as to what your evidence would be, that you saw fit to denigrate Mr Berry. There is an element of remorse that comes through in the pre-sentence report, but I cannot accept, Ms Joyce, that you are genuinely remorseful. I do not accept that you have yet embraced the magnitude of what you have done and the pain that you have caused. In my view, your focus remains very self-centred. A lack of remorse does not aggravate the offending but you do not express remorse at any level that would warrant any reduction in the MPI.

Age

[65] Finally, Mr Peters refers to age and asks for a 12-month deduction to recognise your age. You were 55 at the time and you are now aged 57 years. Mr Peters is right that deductions have been allowed when a very lengthy sentence is imposed to reflect an offender's age when they will finally be eligible for parole. But such cases typically involve health issues and involve offenders who are much older than you.²⁰ I do not consider your age warrants a deduction.

[66] So, Ms Joyce, the total deduction that I allow to reflect your personal circumstances is one of nine months and that brings the final MPI to one of 13 years, nine months.

Final remark

[67] I again emphasise that the sentence I impose is one of life imprisonment. That means you must spend the rest of your life in prison unless and until the Parole Board

²⁰ *Thompson v R* [2020] NZCA 355; and *R v Parrish* (2003) 21 CRNZ 571 (CA).

determines that you can be safely released into the community. Fixing a minimum term, as I have done, does not mean you will be released on parole when that period expires. Rather, it sets the period which must elapse before the Parole Board can consider your release.

Result

[68] Ms Joyce, will you please stand.

[69] Rena Joyce, on the charge of murdering Martin Berry, I sentence you to life imprisonment with a minimum period of imprisonment of 13 years and nine months.

[70] I remind you of the strike warning that I gave you following the jury's verdict.

[71] You can stand down.

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Eaton J

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